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16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 No. CR 18-00569-GW

21 Plaintiff,

22 GOVERNMENT'S SENTENCING POSITION

23 v.

24 Hearing Date: January 19, 2023

25 Hearing Time: 8:00 a.m.

26 Location: Courtroom of the
27 Hon. George H. Wu

28 THOMAS J. SHEPOS,

Plaintiff.

Defendant.

29 Plaintiff United States of America, by and through its counsel
30 of record, the United States Attorney for the Central District of
31 California and Assistant United States Attorney Lindsey Greer Dotson,
32 hereby files its sentencing position for defendant THOMAS J. SHEPOS.

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The government's sentencing position is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: January 11, 2023

Respectfully submitted,

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SCOTT M. GARRINGER
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Chief, Criminal Division

/s/ Lindsey Greer Dotson

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant pled guilty to a two-count information charging him with False Statements, in violation of 18 U.S.C. § 1001(a)(2), and Subscribing to a False Tax Return, in violation of 26 U.S.C. § 7206(1).¹ As detailed herein, he cooperated early, extensively, and fulsomely in a significant public corruption investigation which, due in large part to defendant, unearthed sizeable corruption schemes in the County of Los Angeles and has resulted in multiple prosecutions and convictions.

Balancing the nature and circumstances of the crimes charged, defendant's history and characteristics, and the need to incentivize significant cooperation like defendant's in order to successfully investigate and root out public corruption, the government requests a sentence of 24 months' probation and an order that he pay \$110,021 to the Internal Revenue Service/United States Treasury for unpaid taxes, exclusive of any additional fines or penalties. A probationary sentence is now particularly appropriate here to avoid unwarranted sentencing disparities in light of the Court's substantial variance given to defendant Arman Gabaei in a related case over the government's objection. The government's requested sentence here is sufficient, but not greater than necessary, to adequately punish and deter.

¹ Defendant was not charged with the bribery or the related offenses listed as relevant conduct in his plea agreement given that such charges would have required use of defendant's protected proffer statements and cooperation information, which the government generally cannot use against a defendant for purposes of charging and sentencing.

1 **II. STATEMENT OF FACTS²**2 **A. Background**

3 From approximately 1998 to 2017, defendant was a public official
 4 employed by the County's Real Estate Division. Defendant's duties
 5 involved negotiating leases between private building and property
 6 owners and various County departments. Defendant was also able to
 7 request and receive proposals from private real estate developers who
 8 wanted to lease their buildings to County departments. Once a
 9 property was identified for a County department in need of space,
 10 defendant was able to negotiate lease terms and draft lease
 11 agreements for the County and private property owners, or direct
 12 others to do so. Based on defendant's level of seniority, defendant
 13 had significant autonomy to contractually bind the County. In
 14 particular, defendant had authority to negotiate contract terms on
 15 behalf of the County, although final contract approval lay with the
 16 Board of Supervisors (the "Board"). However, defendant had authority
 17 to approve, with others, change orders on contracts.

18 **B. The Arman Gabaei Bribery Scheme³**

19 Arman Gabaei was a real estate developer who conducted business
 20 with the County. Sometime between 2000 and 2005, Gabaei began to
 21 seek improper assistance from defendant in the course of conducting
 22 his (Gabaei's) real estate business with the County. In

23
 24 ² The Statement of Facts is based on the Factual Basis in
 defendant's Plea Agreement. (Dkt. 9, ¶ 18.)

25 ³ In case no. 18-CR-331-GW, Gabaei was charged with three counts
 26 of Honest Services Wire Fraud (18 U.S.C. §§ 1343, 1346) and two
 27 counts of Federal Program Bribery (18 U.S.C. § 666). Just one week
 prior to trial, Gabaei pled guilty to count four (Federal Program
 Bribery) for the million-dollar home bribe offer. With a Total
 Offense Level of 30 and Criminal History Category I, defendant's
 Guidelines' range was 97 to 120 months. This Court sentenced Gabaei
 to 48 months' imprisonment. (18-CR-331-GW Dkt. 282.)

1 approximately 2010 or 2011, Gabaee began giving cash payments to
2 defendant. Initially, the amounts were \$5,000 per month for
3 approximately five to six months. After that point, to on or about
4 April 11, 2017, Gabaee gave defendant monthly cash payments of
5 approximately \$1,000. The relationship between defendant and Gabaee
6 changed shortly after defendant began accepting these monthly
7 payments in 2010 or 2011. Specifically, their relationship
8 transformed to an illegal business relationship, wherein defendant
9 would use his County position to provide assistance to Gabaee and
10 financially benefit Gabaee's businesses in return for Gabaee's
11 monthly payments.

12 The assistance that defendant provided to Gabaee in return for
13 the \$1,000 monthly payments included the following: (a) defendant
14 providing non-public County information to Gabaee, including but not
15 limited to, information about the County's leasing needs and
16 competing bids for leases Gabaee desired; (b) defendant giving added
17 attention to, and performing official acts for, Gabaee with regard to
18 Gabaee's existing and potential leases with the County; and (c)
19 defendant resolving issues between Gabaee and various County
20 departments leasing space from Gabaee where issues have arisen within
21 the occupied properties and resolving those issues on terms that were
22 favorable to Gabaee.

23 For instance, on one occasion in 2011, defendant "ran
24 interference" for Gabaee regarding maintenance issues that had arisen
25 in properties Gabaee was leasing to the County. The County
26 departments leasing space in the properties owned by Gabaee were
27 upset with maintenance issues, such as broken elevators and roof
28 leaks. Gabaee relied heavily on defendant to address the issues with

1 the departments by improperly deflecting blame away from Gabaee and
 2 onto independent contractors and by allowing Gabaee more time to
 3 resolve issues.

4 In addition, prior to defendant's cooperation (which began on or
 5 about December 16, 2016), Gabaee had offered to buy a property in
 6 Northern California for defendant as a bribe. The value of the
 7 properties Gabaee sought to purchase as a bribe for defendant
 8 exceeded \$1,000,000. In exchange for the Northern California
 9 property bribe, Gabaee sought defendant's assistance securing a
 10 County lease for Gabaee, whereby the Department of Public Social
 11 Services ("DPSS") would lease space in the Hawthorne Mall, which
 12 Gabaee owned and was redeveloping.

13 **C. The Enrique Contreras Bribery Scheme⁴**

14 In addition to bribes from Gabaee, defendant also accepted
 15 bribes from an electrical contractor named Enrique Contreras
 16 ("Contreras"). Contreras paid defendant in exchange for defendant
 17 disclosing non-public County information and helping Contreras secure
 18 County contracts.

19

20 ⁴ In case no. 19-CR-257-RGK, Contreras pleaded guilty to a two-
 21 count information charging him with Federal Program Bribery (18
 22 U.S.C. § 666) and Subscribing to a False Tax Return (26 U.S.C.
 23 § 7206(1)). After a four-level downward departure for substantial
 24 assistance and a four-level variance, Contreras's Guidelines range
 25 was 37 to 46 months. The Honorable R. Gary Klausner, United States
 District Court Judge, sentenced Contreras to 24 months' imprisonment,
 three years' supervised release, and ordered him to pay \$821,366 in
 restitution (\$600,000 to the County for bribes paid and \$221,366 to
 the United States Treasury for unpaid taxes). (19-CR-257-RGK Dkt.
 40.)

26 In case no. 19-CR-258-RGK (a case related to the Contreras
 27 case), a County employee whom Contreras was bribing, Mohammad
 Tirmazi, was sentenced to 12 months' imprisonment, three years'
 28 supervised release, and ordered to pay \$420,010 in restitution
 (\$299,707 to the County for bribes received and \$120,303 to the
 United States Treasury for unpaid taxes). (19-CR-258-RGK Dkt. 36.)

1 The illicit nature of their relationship began in approximately
2 August 2013 when Contreras offered defendant \$25,000 to \$40,000 for
3 information that would help Contreras win a bid to perform electrical
4 work on a property leased by the County. Contreras's work included
5 wiring speakers and installing alarms and security systems.

6 In exchange for the cash payments, defendant would obtain non-
7 public information from the County's Internal Services Department
8 ("ISD") about whether the County had received bids in response to a
9 County Request for Proposal ("RFP"). The RFP process was the means
10 by which competing contractors submitted bids to the County to
11 perform work on County properties. Defendant would then disclose
12 that non-public information to Contreras and/or tell Contreras about
13 prior winning bids on similar projects so that Contreras could submit
14 a more competitive bid to the County through the RFP process.
15 Defendant did this to help Contreras obtain the County contract. In
16 other instances, when either there were no other qualifying bids
17 submitted or time constraints precluded a formal RFP, defendant would
18 contact ISD and use the influence of his County position to help
19 Contreras obtain the County contract.

20 Contreras always paid defendant in cash two to three times per
21 year, usually in an envelope containing \$50 or \$100 bills. From
22 approximately 2013 through December 2016, Contreras gave defendant a
23 total of \$250,000 to \$300,000 for defendant's assistance with five to
24 seven County contracts ultimately awarded to Contreras. Defendant
25 did not report these bribe payments on his federal tax returns.

26 **D. The Kickback Schemes**

27 On several occasions, defendant arranged to receive improper
28 kickbacks from real estate commissions on properties leased by the

1 County. Defendant received Form 1099s for these commissions, which
2 totaled approximately \$59,200 for 2012, 2014, and 2016, and reported
3 it as income on his individual tax returns.

4 In another instance, approximately in 2013, defendant arranged
5 with an associate of Gabae's to receive, and did receive, a real
6 estate commission kickback of \$35,000, through a third party, for the
7 County's lease of a property on Missouri Avenue in West Los Angeles
8 but did not pay income taxes on his receipt of these funds.

9 **E. Other Unreported Income**

10 Defendant gave some of the cash he received from Contreras to
11 Individual A to store for him (defendant). On one occasion,
12 defendant gave Individual A approximately \$150,000 to store. On
13 another occasion, defendant gave Individual A approximately \$25,000
14 to \$40,000 to store. Individual A eventually used the funds to cash
15 checks for Contreras and gave defendant \$2,500 in interest.
16 Defendant did not report the \$2,500 as income.

17 **F. False Statements to Federal Agents**

18 On or about November 21, 2016, Federal Bureau of Investigation
19 ("FBI") Special Agents interviewed defendant at the United States
20 Attorney's Office in Los Angeles. Defendant knowingly and willfully
21 made materially false, fictitious, and fraudulent statements and
22 representations to the agents, which included the following: (a)
23 defendant denied that he received anything of value from anyone doing
24 business with the County; (b) defendant claimed that a \$25,000
25 cashier's check agents questioned him about represented gambling
26 proceeds that defendant had won in prior years; and (c) defendant
27 claimed that unexplained deposits in his bank accounts were gambling
28 proceeds.

1 In truth, as detailed above, defendant did receive money and
2 other things of value from individuals doing business with the
3 County. Furthermore, the \$25,000 cashier's check actually
4 represented bribe proceeds from Contreras that Individual A had
5 stored for defendant, and defendant did deposit cash bribe payments
6 from Gabae and others into his bank accounts.

7 Defendant made the aforementioned false statements to conceal
8 his illegal bribery schemes with Gabae and others. Defendant's
9 false statements were material, that is, they had a tendency to
10 influence the FBI's investigation and affected the FBI's ability to
11 properly investigate the illegal activity of defendant and others.

12 **G. False Statements on Tax Return**

13 On or about April 14, 2015, in Los Angeles County, defendant
14 willfully made and subscribed to a materially false United States
15 Individual Income Tax Return, Form 1040, for the calendar year 2014,
16 which defendant verified by a written declaration that it was made
17 under penalty of perjury, and filed such tax return with the Internal
18 Revenue Service ("IRS"), which defendant did not believe to be true
19 and correct as to every material matter in that it failed to report
20 the additional income for 2014 described herein. Specifically, the
21 tax return reported total income of \$109,274 and failed to disclose
22 additional income of \$139,400.

23 The false information provided by defendant was material in that
24 it affected the IRS's calculation of the amount of income earned and
25 prevented the IRS from verifying the accuracy of the amount of tax
26 claimed to be owed on defendant's return. Defendant acted willfully.
27 Defendant knew that the law required him to report all income
28

1 accurately and to pay all income tax that was due and owing.

2 Defendant voluntarily and intentionally violated that duty.

3 **H. Tax Due and Owing on Unreported Income**

4 For calendar years 2010 to 2016, defendant failed to report a
5 total of \$434,400 of income he received from the bribery and/or
6 kickback payments described above, which consists of the following
7 amounts for the following years: \$25,000 (2010); \$12,000 (2011);
8 \$12,000 (2012); \$52,000 (2013); \$139,400 (2014); and \$102,000 (2015);
9 and \$92,000 (2016). Defendant's unreported income for 2014 included
10 approximately \$102,000 in bribe payments.

11 Defendant's underreporting of income resulted in lowering the
12 taxes reported as due and owing on his Form 1040 individual tax
13 returns. As a result of defendant's conduct, defendant owes
14 additional taxes totaling \$110,021 consisting of the following
15 amounts for the following tax years: \$3,941 (2010); \$1,625 (2011);
16 \$3,325 (2012); \$14,216 (2013); \$38,972 (2014); \$26,019 (2015); and
17 \$21,923 (2016).

18 **III. ARGUMENT**

19 **A. Defendant Has Earned a Six-Level Downward Departure**

20 **Pursuant to U.S.S.G. § 5K1.1 for His Substantial Assistance**

21 Pursuant to 18 U.S.C. § 3553(e), the government may move for a
22 downward departure where a defendant has provided substantial
23 assistance in the investigation of another person. In assessing
24 whether to accept the government's recommendation, the Court may
25 consider, among other things, the following factors:

26 1) the court's evaluation of the significance and usefulness
27 of the defendant's assistance, taking into consideration
the government's evaluation of the assistance rendered;

- 1 2) the truthfulness, completeness, and reliability of any
- 2 information or testimony provided by the defendant;
- 3 3) the nature and extent of the defendant's assistance;
- 4 4) any injury suffered, or any danger or risk of injury to the
- 5 defendant or his family resulting from his assistance; and
- 6 5) the timeliness of the defendant's assistance.

7 U.S.S.G. § 5K1.1. In nearly every respect, a significant departure
8 is warranted here.

9 When approached by federal agents in 2016, defendant made a
10 choice -- one that most defendants, particularly corrupt public
11 officials and their bribe-payors, fail to make. He cooperated. He
12 cooperated early and actively, thereby giving the government an
13 opportunity to gather evidence of crimes as they were happening in
14 real time and in a manner to stop them before completion. Except for
15 his initial interview with law enforcement, he told the truth. He
16 was fulsome in his truth-telling, never minimizing his own
17 culpability and exposing schemes and crimes of which the government
18 was previously unaware. He wore a wire and collected bribes from
19 multiple corrupt actors for five months. He helped the government
20 secure two federal wiretaps in a sprawling corruption investigation.
21 He exposed multiple bribery schemes that would have continued
22 unabated but for defendant. He unmasked corruption in the County
23 that has since led to the convictions and significant sentences of
24 two bribe-payors and another public official. Of note, one of those
25 now-convicted bribe-payors was Arman Gabae -- a wealthy real estate
26 developer captured on consensual recordings and wire calls offering a
27 million-dollar bribe to defendant to secure a \$45 million lease.

In short, despite his admittedly egregious and appalling conduct, defendant has righted the ship to the best of his ability for the past six years since agents first approached him, cooperating at every turn and in every way the government has asked, including most recently by preparing to testify at the Gabaee trial. (Gabaee pled guilty just one week prior to trial.) Defendant has been an integral part of rooting out systemic corruption in the County. The government cannot bring these types of impactful public corruption cases without the cooperation of individuals like defendant. Accordingly, to adequately reflect defendant's fulsome cooperation and incentivize similar cooperation from others, defendant has earned a six-level departure under U.S.S.G. § 5K1.1.

B. With a Six-Level Downward Departure, Defendant Has a Guidelines Range of Four to 10 Months' Imprisonment

The government concurs with the United States Sentencing Guidelines calculations in the Revised Pretrial Services Report ("PSR"). Defendant has a Total Offense Level of 15 before any departure and falls in Criminal History Category I. (Dkt. 61, p. 4.) With a deserved six-level downward departure for his substantial assistance in exposing and successfully prosecuting multiple corruption schemes, defendant's Total Offense Level is 9, and his new Guidelines range is four to 10 months' imprisonment.

C. The Section 3553(a) Factors Warrant a Sentence of
24 Months' Probation and Restitution of \$110,021

In determining a sufficient sentence, courts must consider the nature and circumstances of the offense, as well as the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). Courts must also consider the need for any sentence imposed to adequately

punish, deter, and reflect the seriousness of the offense. 18 U.S.C. § 3553(a)(2). Any sentence must also protect the public. *Id.*

With respect to the nature and circumstances of defendant's crimes, his counts of conviction here -- False Statements and Subscribing to a False Tax Return -- are significant. The former undermines the government's ability to investigate crime. The latter fuels systemic underreporting of tax obligations, particularly when not adequately prosecuted and punished. While other felonies may present more immediate and dangerous risks of harm to the public, such as violent crime and narcotics offenses, defendant's crimes are still consequential and deserving of punishment. Furthermore, beyond the counts of conviction, defendant has admitted, as relevant conduct, serious breaches of the public's trust while serving as a

5 The government concurs with Probation that restitution is
25 limited to losses stemming from the counts of conviction (False
Statements and Subscribing to a False Tax Return) and thus is limited
26 to the losses to the federal government stemming from defendant's
unpaid taxes. United States v. Minter, 146 F. App'x 123, 125 (9th
27 Cir. 2005) (unpublished). In addition, because the PSR concluded
28 that defendant has no ability to pay a fine and the government has no
information to the contrary, the government is not requesting a fine
at this time.

1 public official. Although the government has agreed to not offer at
2 sentencing proffer or cooperation information, the Court may consider
3 the information contained in defendant's plea agreement. It is worth
4 noting, however, that such information was provided of defendant's
5 own volition. At the time the government approached defendant, the
6 government did not have significant evidence of the crimes detailed
7 in his plea agreement. It is in large part because of defendant that
8 this corruption, particularly his own, was exposed.

9 Beyond the nature and circumstances of defendant's conduct, the
10 Court must also consider defendant's history and characteristics. On
11 the one hand, defendant's gainful employment with the County and
12 high-level position are aggravating. On the other hand, defendant
13 was, at least in part, driven by financial stress, significant
14 familial discord, and the serious health issues detailed at
15 paragraphs 88 through 89 of the PSR. These stressors, while in no
16 way defenses to his conduct, are at least somewhat mitigating and
17 place him in a very different category from someone like Gabaee, a
18 wealthy real estate developer with no mental health or substance
19 abuse issues, a stable family life, and who was motivated almost
20 entirely by an insatiable greed.

21 Furthermore, when fashioning a sentence, the Court must also
22 consider the need to incentivize certain conduct and protect the
23 public. A probationary sentence for defendant, given his exceedingly
24 unique circumstances, does just that. As detailed above, defendant
25 is unlike most defendants and certainly unlike Gabaee or Contreras.
26 When given the opportunity, defendant cooperated early, extensively,
27 fulsomely, and significantly. Gabaee refused, repeatedly, to
28 cooperate. Gabaee lied to federal agents. Even at his own

1 sentencing, after pleading guilty just one week prior to trial, he
2 continued to minimize his own conduct and demonstrated a fundamental
3 lack of appreciation for the scope and magnitude of his crimes.
4 Contreras, while later contrite, took an entire year to agree to
5 cooperate. And during that year, he obstructed the federal
6 investigation.

7 In contrast, defendant came to the cooperation table early.
8 Other than his initial interview, he has been genuinely remorseful
9 from the outset. When implicating others, he implicated himself and
10 accepted responsibility. He did not minimize his own culpability.
11 He wore a wire, collected bribe payments for five months, and
12 unmasked massive corruption in multiple schemes that would have
13 continued unabated but for his cooperation. He saved the government
14 innumerable resources by not engaging in the dilatory and frivolous
15 tactics of someone like Gabaee. He has also been free on release for
16 six years without issue. All of these things must be incentivized.
17 The government, particularly when seeking to weed out corruption,
18 cannot do so without cooperators like defendant. Given his law-
19 abiding conduct while free for the past six years, his genuine
20 remorse, and his extensive cooperation, a probationary sentence here
21 is sufficient but not greater than necessary to punish and deter,
22 particularly when his Guidelines sentence is four to 10 months.

23 Finally, a probationary sentence is now particularly appropriate
24 here to ward against unwarranted sentencing disparities in light of
25 the Court's substantial downward variance given to Gabaee -- a
26 sentence of just 48 months' imprisonment despite a Guidelines range
27 of 97 to 120 months and government recommendation of 108 months.
28 Although they were parties to the same corrupt relationship, for the

1 reasons previously mentioned, defendant and Gabaee are not similarly-
2 situated. Their Guidelines ranges are drastically different -- four
3 to 10 months for defendant and 97 to 120 months for Gabaee. Gabaee's
4 history and characteristics are also more aggravating, as was his
5 obstructive and dilatory conduct after agents alerted him that they
6 were aware of his crimes and his continued minimization up to and
7 including his statements at sentencing. Gabaee's conduct is
8 everything the government must disincentivize. Defendant's fulsome
9 acceptance and extensive cooperation, on the other hand, are
10 everything the government must incentivize to prosecute these types
11 of significant public corruption investigations.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the government respectfully requests
14 that this Court sentence defendant to 24 months' probation and order
15 him to pay restitution in the amount of \$110,021 to the Internal
16 Revenue Service/United States Treasury for unpaid taxes, exclusive of
17 any additional fines or penalties.

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